**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MRS. JUSTICE K.HEMA**

**WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929**

**MFA.No. 192 of 2001**
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**O.P(MV).NO.1323/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, PALA.**
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**APPELLANT/ 3RD RESPONDENT:**
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**THE ORIENTAL INSURANCE CO. LTD.,**
**KOTTAYAM, NOW REPRESENTED ITS DEPUTY MANAGER,**
**REGIONAL OFFICE, METRO PALACE,**
**KOCHI -18.**

**BY ADV. SRI.MATHEWS JACOB.**

**RESPONDENTS/ PETITIONERS AND RESPONDENTS 1, 2, AND :**
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1. **PARUKUTTY NARAYANAN, W/O. NARAYANAN, KATTAMALA HOUSE, POONJAR, THEKKEKARA.P.O., POONJAR, KOTTAYAM.**

2. **PURUSHAN.N.N., S/O. NARAYANAN OF, -DO- -DO-.**

3. **RAVI K.N, S/O. NARAYANAN OF, -DO- -DO-.**

4. **RAJU K.N., S/O. NARAYANAN OF, -DO- -DO-**

5. **SURA K.N., S/O. NARAYANAN OF -DO- -DO-.**

6. **AMMINI K.N., D/O. NARAYANAN OF, -DO- -DO-.**

7. **BHANU CHELLAPPAN, PULIYANMALA HOUSE, ELAMTHOTTAM, ANTHINADU.P.O., PRAVITHANAM, PALA.**

8. **RADHA GOPI, D/O. NARAYANAN, EDAYATHU HOUSE, ANIKKADU.P.O., COMPANYPADY, MOOVATTUPUZHA.**

**M.F.A. NO. 192/2001:**

**9. A.K. KOCHUMOHAMMED, AMBAZHATHINAL HOUSE, NADACKAD.P.O., ERATTUPETTA.**

**10. SUNIL @ RAKKUYIL SON OF MOHAMMED, THANNIPPARA HOUSE, THANNIPPARA BHAGAM, PANACHIKAPARA KARA, POONJAR, NADUBHAGOM VILLAGE.**

**11. GOPINATHAN K.N., S/O. NARAYANAN, TOOL MAKER, 3-283, POONYA INDUSTRIAL ESTATE, BANGALORE.**

**BY ADV. SRI.BABY THOMAS,**
**SRI.MATHEW JOHN.**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B. KOSHY & K.HEMA, JJ.**

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**M.F.A.No. 192 of 2001**

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**Dated this the 24th day of October, 2007**

**Judgment**

**Koshy,J.**

This appeal is filed by the insurance company contending that quantum of compensation awarded by the tribunal was very high and insurance company is not liable to compensate the claimants for the death of their dependent. An elderly person died in an accident on 21.7.1993. While walking along the road, he was hit by the autorickshaw bearing registration No. KL 5/2735 insured by the appellant insurance company. Eight legal representatives (wife and children) filed an application for compensation. Tribunal awarded only Rs.50,000/- with interest. With regard to the quantum of compensation, the deceased was a blacksmith. Even though Rs.1,500/- was claimed as monthly income, in the absence of evidence, only Rs.1,000/- was taken as the monthly income which is below the notional income for a non-earning

person fixed under the Second Schedule. Considering the old age, only 5 was taken as the multiplier. Therefore, at no stretch of imagination, it can be stated that multiplier adopted was excessive or more than just and reasonable compensation was awarded.

2. The tribunal found that the driver of the autorickshaw insured by the appellant was responsible for the accident because the driver had no valid driving licence and there is violation of policy conditions. The tribunal accepted the above contention and allowed the insurance company to recover the amount from the insured. The Supreme Court in various cases including National Insurance Company Ltd. v. Baljit Kaur and others (AIR 2004 SC 1340) and Oriental Insurance Company Ltd. v. Nanjappa and others (AIR 2004 SC 1630) held that when there is violation of insurance policy, statutory third party liability of the insurance company cannot be evaded, but, due to violation of policy condition, insurance company is entitled to recover the same from the insured. Coverage of the vehicle by the policy issued by the appellant insurance company is not disputed. The tribunal has given the right to recover

the amount from the insured. In the above circumstances, we see no ground to interfere in the award.

Appeal dismissed.

**J.B.KOSHY**
**JUDGE**

**K. HEMA**
**JUDGE**

vaa

**J.B. KOSHY AND**
**K.HEMA,JJ.**

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M.F.A.NO.192 OF 2001

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**Judgment**

Dated:24th October, 2007